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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
KUNEMUND, ROBERT M	

ART UNIT	PAPER NUMBER
1765	

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/631,185	STEWART ET AL.	
	Examiner	Art Unit	
	Robert M Kunemund	1765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 January 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-92* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-92* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 to 8 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nienhaus or DeTitta et al.

The Nienhaus reference teaches an apparatus and a method of creating a database. There is a means to observe the crystallization data form different trials. The results are feed via an input means to an electronic database, which stores the information, note figure 2. The DeTitta et al reference teaches an apparatus and a method of creating a database. There is a means to observe the crystallization data form different trials. This is an optical system. The results are feed via an input means to an electronic database, which stores the information, and there is a processor, note, figures 6 to 9. The Nienhaus and DeTitta et al references differ from the instant claims

in the verbal input means. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill to determine through routine experimentation the optimum, operable means to allow the operator of the crystallization system in the DeTitta et al and Nienhaus references to input data using verbal commands.

The Nienhaus reference further differs from claims 2 and 3 in the optical systems. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill to determine through routine experimentation the optimum, operable means to observe the crystallization in the Nienhaus reference, as the use of optics in crystal growth is well known.

Claims 9 to 63 and 65 to 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nienhaus or DeTiita et al.

The Nienhaus and DeTitta et al references are relied on for the same reasons as stated, supra, and differ from the instant claims in the software means. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill to determine through routine experimentation the optimum, operable means to software to create and use the databases of the DeTitta et al and Nienhaus references in order to place the data in the ways that allow for easier access and creation.

Response to Applicants' Arguments

Applicant's arguments filed January 7, 2004 have been fully considered but they are not persuasive.

Applicants' argument concerning the Nienhaus reference in view of claims 2 and 3 is noted. However, the prior art does teach that one needs to observe the growth with a visual means. In fact, the DeTitta et al. reference, which is of record, does teach the use of optics to observe and record crystals. Therefore, it is well within the skill of one of ordinary skill in this art to add an optical system to the teachings of the Nienhaus in order to better record and see the crystals.

Applicant's argument concerning claims 4-7, and 64 has been considered and not deemed persuasive. The use of verbal commands is known as a means of adding data to the computer database. It would have been obvious to one of ordinary skill in the art that when one is creating or adding to a database that a system that is flexible to how the data is entered would allow for better and easier use by an operator. The addition of verbal means is merely adding a higher degree of flexibility to the system and clearly within the skill of one of ordinary skill.

Applicants' argument concerning claims 9-63 and 65-92 is noted. Applicant's arguments are not persuasive because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M Kunemund whose telephone number is 571-272-1464. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine Norton can be reached on 571-272-1465. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMK

ROBERT KUNEMUND
PRIMARY EXAMINER